

March 24, 2022

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3 SHERROD, TEED, VANDERHAGEN and WARE,

4 Plaintiffs,

- V -

Case No. 17-10164

VNA and LAN

## Defendants.

1

JURY TRIAL

10 BEFORE THE HONORABLE JUDITH E. LEVY  
UNITED STATES DISTRICT JUDGE

11 MARCH 24, 2022

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22 (Appearances Continued on Next Page)

24 TO OBTAIN A  
CERTIFIED  
TRANSCRIPT:

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March 24, 2022

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## PROCEEDINGS

2 THE CLERK: Calling Sherrod, Teed, Vanderhagen and  
3 Ware v VNA and LAN.

4 THE COURT: Good morning. Could we have appearances,  
5 please.

6 MR. STERN: Good morning, your Honor. Corey Stern  
7 and Moshe Maimon for the bellwether plaintiffs.

8 THE COURT: Thank you.

9 MR. STEIN: Good morning, your Honor. Daniel Stein  
10 and Jim Campbell for VNA.

11 THE COURT: Thank you.

12 MR. MASON: And Wayne Mason and Phil Erickson for  
13 LAN, Your Honor.

14                   THE COURT: Please be seated. And Leslie informed me  
15 that there was discussion about something related -- okay.  
16 Mr. Campbell.

17 MR. CAMPBELL: Good morning again, Your Honor.

18 THE COURT: Good morning.

19 -- to the deposition objections. And what is it?

20 MR. CAMPBELL: Your Honor, if you recall, this is as  
21 to David Gadis, the witness that's testifying right now.

22 THE COURT: Yes.

23 MR. CAMPBELL: You will recall that among the rulings  
24 that you looked at for the deposition, you excluded his  
25 testimony regarding his family members living in Flint.

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1                   THE COURT: That's right.

2                   MR. CAMPBELL: And --

3                   THE COURT: That was a tough decision. I sat over  
4 the weekend and went back and forth every other hour.

5                   MR. CAMPBELL: It's interesting, Your Honor. We were  
6 looking at the transcript that was supplied to us, you know,  
7 just to make sure that it was included. And we noticed that  
8 the second reference we believe had been inadvertently  
9 included. I alerted Mr. Maimon to that and we took it out.

10                  But after listening to the testimony yesterday that  
11 was played by -- or Mr. Gadis's testimony, he was really  
12 challenged as to his motive and, you know, his intentions and  
13 his credibility about what he was doing -- what VNA was doing  
14 in Flint and his own personal motivations.

15                  And when you listen to the question, you know, the  
16 questions were somewhat dripping with sarcasm, if you will, as  
17 he was challenged about that.

18                  So I would ask or VNA would ask that Your Honor  
19 reconsider the two references where regarding his family  
20 members in Flint. And I have the pages if you'd like me to  
21 hand them up to you.

22                  THE COURT: Oh, you have them right there. I was  
23 going to look on --

24                  MR. CAMPBELL: Page 87, 88 lines --

25                  THE COURT: Why don't I look at what you have.

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1           But Mr. Campbell, are you bringing him in live?

2           MR. CAMPBELL: He's no longer an employee.

3           THE COURT: I know.

4           MR. CAMPBELL: So we don't control him and no.

5           THE COURT: He seems like the type who would happily  
6 show up if you asked him. He's devoted to water and lifelong  
7 water guy.

8           MR. CAMPBELL: He is all of that, Your Honor. But  
9 he's given -- I know that he advised Mr. Stern, because he  
10 reported it to the Court, that he wasn't coming to the trial.

11           THE COURT: Okay.

12           MR. CAMPBELL: He's --

13           MR. STERN: Well he advised me that he wouldn't show  
14 up for me.

15           THE COURT: Right.

16           MR. STERN: He wouldn't even accept a subpoena from  
17 me. There's a difference between whether I can bring him here  
18 or whether the folks that he has the agreement with as part of  
19 his termination, the joint effort, the joint, you know -- he  
20 doesn't have that with any of our clients.

21           MR. CAMPBELL: Right.

22           MR. STERN: He has that with VNA.

23           MR. CAMPBELL: Thank you. But he's not willing to  
24 come here. So we don't control him. He's not coming.

25           THE COURT: Have you asked him? Because one solution

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1        instead of going back in the video and so on, if I were to  
2        grant this motion for reconsideration or whatever, one  
3        solution would be just to have him come in live and --

4            MR. CAMPBELL: But Your Honor, we don't control him.

5            THE COURT: Okay.

6            MR. CAMPBELL: I can't do that. He is in charge of  
7        District of Columbia Water Group and he has no interest in  
8        appearing. He's got his own lawyer.

9            MR. STERN: This is the same transcript and the same  
10        video that was paged and lined -- the testimony hasn't  
11        changed. The video hasn't changed. The examination hasn't  
12        changed since --

13            THE COURT: No, I understand that.

14            So the first one is the -- and I understand it's page  
15        87 line 2 through, whatever that is, 7. Well, it's all of the  
16        red.

17            MR. CAMPBELL: Yes.

18            THE COURT: And then is there a second reference that  
19        did stay in?

20            MR. CAMPBELL: Yeah. 87 spills over to page 88 line  
21        3. And then the second reference, Your Honor, is page 696  
22        line 13 through 697 line 23.

23            MR. STERN: And so just -- I just want to ask. So  
24        the basis of the question is because the tone of the  
25        examination ?

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1                   THE COURT: Just a minute.

2                   Go ahead, Mr. Stern.

3                   MR. STERN: Mr. Maimon will take it.

4                   THE COURT: Oh.

5                   MR. MAIMON: So Your Honor, we do not believe  
6 reconsideration is appropriate either procedurally or  
7 substantively. And the reason that I say that is we've gone  
8 through a whole series of proceedings and rulings by the  
9 Court.

10                  So specifically with regard to Mr. Gadis, Mr. Gadis,  
11 part of his testimony -- and I don't have the full testimony  
12 here because the page 88 testimony is not full. But many of  
13 the things that Mr. Gadis talked about was, hey, my cousins  
14 and my relatives, they drank the water in Flint. And --

15                  THE COURT: I know. That's ultimately why I ruled  
16 that this should be out. Because we just weren't going to  
17 talk about people who are -- who make a decision to drink the  
18 water. We don't know what time -- when they drank the water.  
19 We don't know where they live. We don't know anything about  
20 them.

21                  MR. MAIMON: And if I can finish my argument. That  
22 ruling was made. And procedurally it's inappropriate at this  
23 point after opening statements, after we opened, for the  
24 defendants to seek reconsideration on anything that implicates  
25 those pretrial hearings because we relied on that with regard

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1 to our openings.

2 Had we had -- so they knew the Court's ruling --

3 THE COURT: Right.

4 MR. MAIMON: -- going in. That's one. Number two,  
5 they had the designations. Number three, if they were  
6 dissatisfied with the Court's rulings, then the time to bring  
7 the motion for reconsideration was before we presented Mr.  
8 Gadis's testimony.

9 THE COURT: Okay. I actually appreciate that  
10 argument. But go ahead.

11 MR. CAMPBELL: Your Honor, if I may just respond very  
12 briefly? Thank you, Your Honor.

13 As to the timing issue, you know, we've dealt with  
14 some really significant timing issues including naming new  
15 witnesses on really fundamental factual issues just before the  
16 start of the trial.

17 So on the timing issues, there's been a lot of that  
18 from the plaintiffs' side and Your Honor has allowed that.  
19 This is something that came up in the testimony. It's a very  
20 discrete issue. We're not talking about his relatives  
21 drinking the water. I don't believe that's in these two  
22 statements.

23 THE COURT: Well, it's implied that they're drinking  
24 the water. I've got relatives there. That's why I care about  
25 Flint, because my cousins and aunts and uncles live there.

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1       Lots of people in his family live there.

2            MR. CAMPBELL: Right. And that's not a reference to  
3 drinking the water. It is a reference that they lived there.  
4 They're two different things.

5            THE COURT: Well, they are two different things  
6 potentially. But also it could be very confusing at this  
7 point. So I'm going to deny your request. I understand it.

8            MR. CAMPBELL: Thank you, Your Honor.

9            THE COURT: I appreciate it. But he has a lot of  
10 testimony. He's a sophisticated actor in this case. He  
11 wasn't hoodwinked into any of this testimony. And so I think  
12 he speaks for himself throughout his deposition as clearly as  
13 he wants to speak. And so --

14            MR. CAMPBELL: And Your Honor, if at the appropriate  
15 time, I'd mark these pages as the next exhibit for  
16 identification. And at this point I'd make an offer of proof  
17 that if permitted Mr. Gadis would testify consistent with  
18 these deposition pages at page 87 line 4 through page 88 line  
19 3 and page 696 line 13 through 697 line 23 that are described  
20 in the offer of proof for these pages.

21            Thank you, Your Honor.

22            THE COURT: Okay. Thank you.

23            MR. MAIMON: And the only reason Mr. Gadis and Veolia  
24 was there was the water, Your Honor.

25            THE COURT: I know.

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1                   MR. MAIMON: So what else could there be?

2                   THE COURT: I mean, is he trying to suggest --

3 because I heard Mr. Gadis say in his role in the -- what is he  
4 COO of Veolia Water North America at this time period?

5                   MR. STERN: Yes.

6                   THE COURT: And I heard him say, no, once we make the  
7 sale, contract is signed, I don't go out to the venue. But if  
8 he were saying here the reason I went to the venue is I wanted  
9 to hang out with my family, that would be relevant because  
10 there's some other material that suggests why he, of all of  
11 the people at Veolia Water North America, showed up.

12                  But he doesn't say anything about this was an  
13 opportunity for me to reconnect with my beloved family  
14 members.

15                  MR. CAMPBELL: But that's not the point of the  
16 testimony. And it's offered at this point, Your Honor, and it  
17 was offered when we designated it to rebut this claim that he  
18 has a different motive.

19                  And you know, the suggestion, the overt suggestion by  
20 the questioner, was that the motive was money only. And his  
21 statements to --

22                  THE COURT: But he doesn't --

23                  MR. CAMPBELL: If I may finish the argument?

24                  THE COURT: Okay.

25                  MR. CAMPBELL: His statements were that, no, they

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1        wanted to help the City of Flint and the citizens of Flint.  
2        He was further challenged. And to support that. And in  
3        support of the motive, the attack on his motive, that his  
4        family members lived there, is certainly relevant. And Your  
5        Honor has described the Sixth Circuit relevant standard as,  
6        you know, slightly --

7                    THE COURT: Yeah.

8                    MR. CAMPBELL: -- making something more or less  
9        likely to be true. And particularly with respect to motive,  
10       there's a case called *Baker v Elcona*, 588 F.2d 551. When  
11       motive is attacked, the standard for admissibility is even  
12       greater, so.

13                   THE COURT: See, I don't -- I hear you and I don't  
14       know that case. But I certainly believe what that case says  
15       and what you represent that it says. But I don't see Mr.  
16       Gadis's -- I don't think anyone is suggesting that his motive  
17       was for him to earn more money, that that's why he wanted to  
18       sign on the dotted line on this small contract. It's the  
19       company.

20                   So it's -- at least I'm following the testimony as  
21       there's an accusation that Veolia wanted to get this \$1  
22       million item at Flint, not Mr. Gadis. Not that he alone was  
23       going to -- I don't know whether he gets a commission or  
24       something. I doubt it.

25                   MR. CAMPBELL: Certainly not his contract personally

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1 and certainly not his guess as to what this contract may  
2 result in the future for the company. But there was testimony  
3 about his personal motivations and what he personally believed  
4 in the like and this goes to that motivation. He was  
5 challenged directly on this point, Your Honor.

6 THE COURT: Okay. I hear you. I don't see this as  
7 challenging his motives as an individual. I see it as  
8 challenging the business model of why Veolia wanted this  
9 contract, not why Mr. Gadis said he wanted the contract.

10 MR. CAMPBELL: Thank you, Your Honor.

11 THE COURT: But thank you. Anything else before we  
12 bring the jury down?

13 MR. CAMPBELL: Nothing from us, Your Honor. Thank  
14 you.

15 THE COURT: Okay. Thank you. Mr. Mason?

16 MR. MASON: No, Your Honor.

17 THE COURT: Okay. Tell me how you think we're doing  
18 time wise in our case. Any --

19 MR. MAIMON: So we're very cognizant of time.

20 THE COURT: And I just don't know -- I mean, I listed  
21 150 plus witnesses but I don't know how many of them we're all  
22 --

23 MR. MAIMON: I don't think we're going to have 150.  
24 I think it's safe to say we're not going to have that many  
25 witnesses.

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1                   We are looking at our witnesses, Your Honor. We  
2 designated a lot less than the defendants' will call  
3 witnesses. We're looking to even reduce the number of  
4 witnesses we have even further and we're working on that as we  
5 speak.

6                   THE COURT: And I'm not asking you to do that. I'm  
7 just trying to get a sense.

8                   MR. MAIMON: No. We're doing that as we speak just  
9 as far as we realize and appreciate that the Court is not  
10 mandating something like that. But we believe it's in the  
11 best interest of everybody, including our clients, to have an  
12 efficient presentation of evidence to the jury. So we're  
13 working on that and hopefully, you know, within the next week  
14 we'll have a better idea of when we expect to rest our case.

15                  THE COURT: Okay.

16                  MR. CAMPBELL: Your Honor, we were actually talking  
17 about this very topic after court yesterday. Through no one's  
18 fault, I think we would all agree that we're probably behind  
19 where we thought we would be just because we had some days off  
20 that no one planned on.

21                  THE COURT: Yeah.

22                  MR. CAMPBELL: But you know, as we can see with these  
23 depositions, you know, Mr. Chen was four hours. Mr. Gadis I  
24 think is five hours. Mr. Benes is three. You know, it takes  
25 time in order to do this.

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1           And this is an exceedingly complex factual case. Not  
2           that any particular issue is very complex. There's just a lot  
3           of them.

4           So what our fundamental concern is, Your Honor, is  
5           the plaintiff is -- has to put their case on. And their case  
6           is against us and LAN. But when it gets to our case, you  
7           know, we really have to prove our case against the emergency  
8           managers, the governor --

9           THE COURT: I know. That's why I was very curious  
10           about Mr. Mason's wish to limit the length of the trial.

11           MR. CAMPBELL: We had some concerns about that as  
12           well, Your Honor.

13           THE COURT: I know.

14           MR. MAIMON: To be fair -- I'm sorry.

15           MR. CAMPBELL: And what I wanted to say, Your Honor,  
16           and as we move through this, there will come a day when the  
17           plaintiffs rest.

18           THE COURT: Yes.

19           MR. CAMPBELL: And then it will be our turn. When  
20           that happens, we need -- you know, we need to put our case on.  
21           And I'm just hoping that all of a sudden that the pace and the  
22           expectation won't change.

23           THE COURT: It won't. I have nothing -- I was a law  
24           clerk for a judge who said, "I've got nothing but time." But  
25           whenever he said that, it meant you better hurry up. So I'm

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1 not going to --

2 MR. CAMPBELL: And having said it that way, Your  
3 Honor --

4 THE COURT: But so I'm not --

5 MR. CAMPBELL: -- I can assure you we'll move as  
6 quickly as possible.

7 THE COURT: I'm not going to -- nothing will change.

8 MR. CAMPBELL: Thank you.

9 THE COURT: Nothing at all will change other than who  
10 I turn to to say, "Do you wish to call another witness?"

11 MR. CAMPBELL: Thank you, Your Honor.

12 THE COURT: That's all that will change.

13 MR. MAIMON: I did have a conversation with Mr. Stein  
14 about this yesterday. And I think we all know that as we move  
15 forward in the trial and especially for instance when the city  
16 and state government officials take the stand, by the very  
17 nature you're not going to have the -- so Mr. Green's  
18 testimony took a long time. But he took a long time with  
19 Mr. Mason. And Mr. Mason was entitled to ask him. And with  
20 Mr. Ter Molen. And Mr. Ter Molen was entitled.

21 So it's not just this is the plaintiffs' case, but  
22 the defendants are putting on affirmative proof during this.

23 THE COURT: Yeah.

24 MR. MAIMON: But we don't need to go through who's  
25 Duffy Johnson again and who's Brent Wright. All those

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1       introductory things that you do once hopefully you don't do  
2       over and over again throughout the trial. And part of a  
3       court's function is to gate keep that.

4                   THE COURT: Yeah.

5                   MR. CAMPBELL: I agree with that.

6                   THE COURT: Just a little sign post of remember Brent  
7       Wright is so and so.

8                   MR. CAMPBELL: And I think that's an appropriate  
9       statement about how the pace will, you know, as we go through  
10      the witnesses, it will definitely change for that very reason.

11                  MR. MASON: If the Court cares, I would like to weigh  
12      in --

13                  THE COURT: I do care.

14                  MR. MASON: -- on this as well. I do think you asked  
15      our impression. And my impression is that we are quite  
16      behind.

17                  And that while plaintiffs are entitled to put on  
18      their case, certainly the level, the depth, and the time of  
19      videotape depositions. Take Mr. Benes, for instance. Three  
20      hours of Mr. Benes in the like leads me to conclusion that  
21      we're maybe double where I thought we would have been in terms  
22      of time at this stage.

23                  And I'm concerned because I go third. And I  
24      appreciate the Court's comments. I want the ability to put my  
25      case on.

1 THE COURT: Absolutely.

2 MR. MASON: And not have the jurors going, "Is this  
3 ever going end?"

4 And so I think from a big picture standpoint,  
5 respectfully I would just ask the Court to ask everyone to,  
6 you know, double check their videotapes and examinations and  
7 things so that we're being as efficient as we possibly can.

8 THE COURT: Okay.

9 MR. MASON: Thank you.

10 MR. MAIMON: I agree with Mr. Mason. However --

11 THE COURT: I agree that the jury is at the door and  
12 we should get started.

13 MR. MAIMON: But he goes third because that's what he  
14 agreed with VNA. Not because the Court mandated that or the  
15 plaintiffs mandated that.

16 THE COURT: Thank you.

17 THE CLERK: All rise for the jury.

18 THE COURT: Good morning.

19 (Jury In)

20 THE COURT: Okay. Please I

21 return to Mr. Gadis testifying by video deposition.

22 MR. MATMON: Yes, Your Honor.

23 THE COURT: And you'll remember he's the chief  
24 operating officer, COO, of Veolia water North America.

25 (Recorded Deposition of David Gadis Played (continued))

1 THE COURT: Thank you for the members of the jury for  
2 being here and for your patience and attention. So we will  
3 adjourn for the week and see you back on Monday. We'll start  
4 right at nine o'clock. That's the plan.

8 So thank you, very much. And I hope you enjoy the  
9 weekend. I did check the weather. It's not going to be  
10 great. So find some way to enjoy it.

11 THE CLERK: All rise for the jury.

12 || (Jury Out)

13 THE COURT: Please be seated.

14 I wanted to say one more thing in response to  
15 Mr. Campbell's motion to reconsider the Court's exclusion of  
16 this witness's reference to the importance of his family.

17                   It truly -- having listened to him carefully today,  
18 it does not ring at all consistent throughout his deposition  
19 or through his trial testimony here that anything related to  
20 his family being in Flint impacted him at all. In fact, if  
21 you look at Page 271 of Volume 1 -- and we heard it today --  
22 the question was, "So you didn't have the same concern as  
23 Mr. Gnagy?" Answer, "I didn't have -- I don't -- I wasn't --  
24 I was -- the thing you have to understand is I moved on from  
25 Flint so I did not -- I was not involved in Flint after the

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1 report had come out. I had very, very little time in Flint."

2 So there's just -- I have not heard anything that  
3 calls into question the -- my decision earlier today to  
4 suggest that the jury needs to know that he has family one way  
5 or another.

6 MR. CAMPBELL: And Your Honor, if I could respond?

7 THE COURT: Sure.

8 MR. CAMPBELL: Sure. You, by taking that one section  
9 out and applying it to his testimony about his family living  
10 in Flint and that being part of his motivation, you know, I  
11 can understand what you just said. But that is one section of  
12 the testimony about Mr. Gnagy and being compared to Mr. Gnagy.

13 But the fact of the matter is, he was challenged  
14 severely about -- and we just heard it again by Mr. Gambill  
15 and by Mr. Blake about motivation regarding upselling and  
16 money. And it is, as you've pointed out as to relevance, it's  
17 -- you know, it's the slightest issue that makes it relevant.

18 And certainly that his family was in Flint, and that  
19 was his motive particularly -- or part of his motive --  
20 particularly after being so severely challenged about it. It  
21 is relevant and it is something that tends to make the fact in  
22 issue what his motive was more or less likely to be true. And  
23 it's a fair piece of evidence to be put in in the full context  
24 of this testimony.

25 MR. MAIMON: Except in the pages that -- we didn't

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1       get the full pages in what counsel for VNA gave the Court this  
2 morning. He said he never talked to his relatives in Flint  
3 about the situation. So if that was his motivation -- I mean  
4 --

5               THE COURT: I don't think this even is slightly  
6 probative of whether VNA -- what its goal was with the Flint  
7 contract.

8               MR. CAMPBELL: Understood.

9               THE COURT: Especially this witness had no goals. He  
10 had no goals. He knew almost nothing. Had no goals.

11               MR. CAMPBELL: Well, I understand that may be the way  
12 that you understand it. But Your Honor, he testified about  
13 helping Flint and getting involved --

14               THE COURT: He did.

15               MR. CAMPBELL: -- with the contract. And you know,  
16 he has a job responsibility with VNA and he carried that out.

17               THE COURT: Yes.

18               MR. STERN: Thankfully the jury got to hear that.

19               THE COURT: Yeah. Okay.

20               Well, thank you, all. So we'll be back here at 8:30  
21 in the morning. Just a second, Mr. Christian.

22               I've received by I think it was around noon today as  
23 requested the designations from VNA and LAN about the areas of  
24 testimony you believe is within the scope of the waiver for  
25 sure or related to the former testimony of the five witnesses

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1        who had previously filed their motion to quash. So I have  
2        that and I'll take a look at it. Yeah.

3                    MR. CAMPBELL: Your Honor, if we could find out -- we  
4        had a preliminary discussion with Mr. Maimon. He said he was  
5        going to play the Gnagy video and maybe have a plaintiff  
6        testify live. But that was not decided as of yet.

7                    THE COURT: What do we know about next week?

8                    MR. STERN: Your Honor, we will have the Gnagy  
9        testimony ready to go. We will have Mayor Walling here. And  
10       we will have Apricot Berry is her last name. It's  
11       Mrs. Teed's mother. So Apricot Teed or Apricot Berry. And  
12       Dietrich White is a preschool caretaker/teacher for the young  
13       Miss Teed.

14                   So those are the four witnesses that we are prepared  
15       for next week. I'm not sure how long -- we'll be calling  
16       Mayor Walling on Monday. I'm not sure how long Mayor Walling  
17       will go. But assuming it's time -- there's time for  
18       additional witnesses, he would be followed in some order by  
19       the Gnagy deposition, Ms. Teed, and Ms. Dietrich.

20                   THE COURT: So Walling is before Gnagy?

21                   MR. STERN: Yes, ma'am.

22                   THE COURT: Okay. And we'll finish Mr. Gadis.

23                   MR. STERN: Yes, ma'am.

24                   THE COURT: Okay.

25                   MR. CAMPBELL: Your Honor, a couple of things.

1 THE COURT: Okay.

2 MR. CAMPBELL: I raised the issue with you and  
3 counsel regarding how we got to be playing the VNA videos of  
4 their depositions. And you know we intend, for instance,  
5 focusing on Mr. Gnagy, we intend to call him live.

6 THE COURT: Okay.

7 MR. CAMPBELL: And we've made counter designations to  
8 this deposition. And I just want to head off any argument  
9 that the testimony when we call him live is cumulative. This  
10 is all in the nature of a cross-examination.

11 I have the counts on the time. And you know, these  
12 depositions are going for five hours or so. And the vast  
13 majority four hours or plus is designations by the plaintiffs.

14 So I just -- I don't -- I want to make sure that  
15 there's no issue about when -- again, focusing on Mr. Gnagy  
16 when he testifies, that playing his deposition affects the  
17 scope of his testimony.

18 MR. MAIMON: So our position, just to be clear, Your  
19 Honor, is if counsel for VNA doesn't want to play any of its  
20 designations, they should let us know. We'll adjust the  
21 videotape accordingly, the video accordingly.

22 If they want to play large sections of what they  
23 designated and we feel that it is cumulative and the same  
24 exact testimony being elicited when and if he comes live we'll  
25 make objections at that time, which I think we have a right to

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1 do and the Court will rule.

2 THE COURT: Yeah. And I think we already talked --  
3 is this a déjà vu all over again?

4 MR. CAMPBELL: Your Honor, you said that we would  
5 listen to Mr. Chen and then bring it up again.

6 THE COURT: Okay. All right. So what I anticipate  
7 happening is I went back. There was an email from either you  
8 or Ms. Devine saying that even though you're not producing the  
9 witnesses for plaintiffs' case in chief, you would be making  
10 some designations of your own. You still intended to call the  
11 witnesses. So I was on due notice of that. I'm not going to  
12 change anything about that.

13 If when the witness gets here and we've heard it  
14 multiple times already, I could see an asked and answered  
15 objection and I'll decide at the time.

16 MR. CAMPBELL: And Your Honor, I just want to be  
17 clear about something.

18 THE COURT: Okay.

19 MR. CAMPBELL: We -- when these subpoenas were issued  
20 to these witnesses, we certainly raised the issue to quash  
21 them because they were invalid. They're outside the  
22 jurisdiction.

23 THE COURT: Right. They were.

24 MR. CAMPBELL: And I believe you agreed with our  
25 analysis of the rule --

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1                   THE COURT: I did.

2                   MR. CAMPBELL: -- and the law. You then said we're  
3                   going to have testimony by each witness one time. And we --  
4                   and if they were going to come in our case, we were going to  
5                   make them available to the plaintiff. We agreed to do that.

6                   And as they can do it, they can play these videos and  
7                   that was their choice.

8                   THE COURT: Correct.

9                   MR. CAMPBELL: And so it's not that we refused to  
10                   bring them here.

11                   THE COURT: Exactly. No, that's just fine. And it's  
12                   just -- we just have to see this in real life. But I don't --  
13                   there's been plenty of asked and answered that was overruled  
14                   in the plaintiffs.

15                   MR. CAMPBELL: Yes.

16                   THE COURT: So the same approach will apply to your  
17                   examination of your witnesses.

18                   MR. CAMPBELL: Thank you, very much, Your Honor.

19                   MR. MAIMON: We don't object to the right that VNA  
20                   has to bring witnesses. They have the absolute right. They  
21                   do have a choice as to where and how they elicit testimony  
22                   from those witnesses.

23                   THE COURT: Well, they said that if they're bringing  
24                   Mr. Chen or they're bringing Mr. Gnagy, that that could be  
25                   your examination. You could then examine them at that time or

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1 whenever it was going to be.

2 MR. MAIMON: And we chose --

3 THE COURT: Yeah.

4 MR. MAIMON: And we all agree we have the right to  
5 choose. We made that choice.

6 My only point is that, you know, let's take Mr. Chen  
7 because we've heard his testimony. I think if they would  
8 bring him live, we'll listen to what he says. But if he's  
9 asked the same questions and gives the same testimony, that's,  
10 by its very nature, cumulative and duplicative.

11 THE COURT: Well, we'll find out.

12 MR. MAIMON: And the Court has the discretion to deal  
13 with it at that time.

14 THE COURT: They reserve the right to do this and  
15 we'll find out how it goes.

16 MR. MAIMON: Yeah. I don't know what questions  
17 they're going ask.

18 THE COURT: I don't either.

19 MR. MAIMON: Okay.

20 MR. CAMPBELL: So you know, again, focusing on  
21 Mr. Gnagy, he's obviously a key figure here as the technical  
22 person on the ground. We're going to do a full examination of  
23 him about what he did just like you would do -- anyone would  
24 do in like circumstances in any case.

25 We're going to -- he's a key witness and we're going

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1 to have him testify about what he did and those things.

2 With respect to a deposition, it's just we have a  
3 right to counter designate. When someone puts in the  
4 deposition, that's the process. So this is the method that  
5 was chosen by the plaintiff. We have a right to counter  
6 designate. And the argument that that somehow precludes us  
7 from putting our case on --

8 THE COURT: No, it doesn't. It won't.

9 MR. CAMPBELL: And calling the witness. And I  
10 just -- I don't -- I don't -- whenever this happens a month  
11 from now or two months from now, parsing through each question  
12 and answer to see whether or not it was in the deposition is  
13 neither a efficient use of time or fair to us.

14 THE COURT: I don't think that would be helpful to  
15 anyone. We'll need a little refresher anyway. So some  
16 questions that were asked can certainly be asked to remind  
17 everybody what they're here for, what their role was. I think  
18 it will go smoothly.

19 MR. MAIMON: I'm hopeful that it goes smoothly also,  
20 Your Honor. However, I don't think that it's fair for an  
21 argument to be made that we've somehow waived objections later  
22 on to whole areas of testimony being fully covered.

23 THE COURT: I don't think you've waived it.

24 MR. MAIMON: Okay. And so I don't think an advisory  
25 opinion about how that ruling is going to go is appropriate

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1 either.

2 THE COURT: And then you get to recross the witness.

3 MR. MAIMON: But our cross is going to be limited to  
4 the direct.

5 THE COURT: That's good.

6 MR. MAIMON: That's the rule.

7 THE COURT: Yeah.

8 MR. MAIMON: Okay.

9 MR. CAMPBELL: Your Honor, just switching topics --

10 THE COURT: But it sounds like the direct is going to  
11 be big, so you'll have a lot of room for your cross.

12 MR. MAIMON: And what I'm saying is that we should be  
13 able to object at the time if -- because, take Mr. Green as an  
14 example. Your Honor allowed Mr. Mason appropriately under the  
15 discretion that the Court has to go beyond the scope of direct  
16 because he had him on the stand here. And that was  
17 appropriate.

18 The same thing is true here in these depositions.

19 Veolia had counsel at these depositions and they did full --  
20 they did "What's your name? Where did you get educated?"  
21 They did direct examinations. They've designated some of  
22 those in this testimony.

23 They can't do that twice. That's all our point is.  
24 And we'll see -- again, if they want to withdraw some of the  
25 designations and save it for their direct examination for

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1       Mr. Gnagy, just let us know which ones you want to take out.  
2       We're happy to accommodate. But we don't believe you have to  
3       have the full expression of the man's lifetime of experience  
4       twice.

5               THE COURT: Okay.

6               MR. CAMPBELL: Your Honor, there's --

7               THE COURT: I just think there's --

8               MR. CAMPBELL: I'm switching topics.

9               THE COURT: But I think we've resolved this topic  
10       until the first witness gets here and then we'll see if  
11       there's a problem of some sort. But I don't recall the direct  
12       of Mr. Chen going into a great deal.

13               MR. CAMPBELL: We addressed three issues that were  
14       clearly brought up in the testimony. It was not a full  
15       examination.

16               THE COURT: No.

17               MR. MAIMON: Then if that's the case we won't have a  
18       problem when Mr. Gnagy comes.

19               THE COURT: The designations were not the full  
20       examination.

21               MR. CAMPBELL: In any case, Your Honor, thank you.

22               THE COURT: But Mr. Christian had something. But  
23       first of all, Mr. Mason has something on this I think.

24               MR. MASON: Just in observation, when we talk about  
25       fundamental fairness and not repetition, we just heard three

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1        different lawyers in this videotape address this \$40,000 fee  
2        thing over and over again. And they didn't cut the tape.

3                THE COURT: I think I mentioned that.

4                MR. MASON: And they didn't pick the one that they  
5        wanted. We listened to it three different times. And so now  
6        it's ironic to suggest that no one else could ask a question  
7        related to a topic. That's just an observation.

8                MR. MAIMON: So it's a good observation. But the way  
9        to deal with it, Your Honor, was when the designations were  
10       made and counsel had an opportunity to object. Mr. Mason, I  
11       would have listened if you would have said this is the third  
12       time the \$40,000 contract is mentioned. We should take the  
13       second two out or we should take the third out. Or they  
14       should have made that objection to the Court and say this is  
15       cumulative now.

16                THE COURT: On Mr. Gadis -- is Mr. -- no, he's not  
17        coming in live. So that doesn't help. Okay. I just think --  
18       I can't sit here and predict what all this is going to look  
19       like. So we're going to wait until it happens.

20                But Mr. Campbell is foreshadowing that he will want  
21        to do a thorough examination direct of his client. Mr. Mason  
22       did a direct of Mr. Green that was quite thorough here.

23                So we'll just have to get there.

24                MR. CAMPBELL: Your Honor --

25                THE COURT: It's just that, Mr. Maimon, you chose to

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1       go the deposition route. I think it's been quite effective in  
2       a lot of ways.

3               It's not my business one way or another what you  
4       choose. But it makes sense that the defendants don't want to  
5       leave that testimony right where you have it without any  
6       response from their perspective or questioning from their  
7       perspective. But their full examination is going to be when  
8       their witnesses are here in person.

9               MR. MAIMON: I don't disagree, Your Honor. All I'm  
10      saying is right now as I sit here today right now in court  
11      today, I don't know what their designations were for  
12      Mr. Gnagy. We'll see tomorrow when we hear the VNA or we'll  
13      see next week when we hear the VNA witness -- I mean lawyer  
14      examine Mr. Gnagy.

15               We'll know what the scope of it was that actually  
16      made it into the final cut. It may be small. It may be  
17      circumspect. It might be very seriously limited to a few  
18      questions that were asked like Mr. Mason was making reference  
19      to about something. That could be.

20               But what I'm saying is I just -- I resist an attempt  
21      to prejudge this and then when Mr. Gnagy is here say that  
22      somehow our objections can't be heard.

23               THE COURT: Okay. Thank you.

24               Mr. Campbell.

25               MR. CAMPBELL: I forget whether the teacher that was

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1       referenced as a potential witness next week, I think it's  
2       Ms. Dietrich.

3                    MR. MAIMON: White. White.

4                    THE COURT: Dietrich White.

5                    MR. CAMPBELL: I forget whether this was a witness  
6        that was disclosed early on or whether this is one of the ones  
7        that was disclosed just prior to the start of trial.

8                    If we're just assuming that it was one that was  
9        disclosed prior to the start of trial, Your Honor will recall  
10      that we objected to those witnesses and there was a process in  
11      place that we use. We depose them.

12                  But the issue is still there and we still may object  
13      to these -- to newly disclosed experts -- I'm sorry,  
14      witnesses.

15                  MR. STERN: Your Honor, that's already been ruled on.

16                  THE COURT: I think we did address that already. We  
17      had a little sidebar in the back.

18                  MR. CAMPBELL: We certainly addressed the issue. And  
19      I will stand corrected if Your Honor had -- has ruled on it  
20      finally and, you know, we can --

21                  THE COURT: I think what I ruled on was Ms. Bush was  
22      going to issue a subpoena for documents.

23                  MR. STERN: And they got them. They got the  
24      documents. So that's great.

25                  THE COURT: Good.

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1                   MR. CAMPBELL: That was as to --

2                   THE COURT: I love it when the system works.

3                   MR. CAMPBELL: When someone follows -- that was I  
4 believe in relation to Ms. Martin. And that was a follow on  
5 issue. I think that was a subset of the larger issue. The  
6 larger issue being the identification of witnesses.

7                   And again, fundamental factual witnesses that were  
8 not previously disclosed. There's no doubt that this issue  
9 came up that we talked about it and Your Honor permitted us to  
10 take depositions of certain witnesses that may be called.

11                  In our view, that's where Your Honor's rulings ended  
12 and we got to take those depositions. We did that. But we  
13 still maintain that the disclosure was late.

14                  THE COURT: It wasn't just an exercise in taking  
15 depositions. You have enough experience with that. It was  
16 because I was going to allow them to be witnesses.

17                  MR. MAIMON: And so the ruling was explicit in that  
18 regard, Your Honor.

19                  THE COURT: I believe it was.

20                  MR. MAIMON: Yes.

21                  THE COURT: But I'd have to go back to the  
22 transcript.

23                  MR. CAMPBELL: I don't -- if it's explicit, then I  
24 stand corrected. But I do not remember it being explicit. I  
25 remember it taking place in steps, that we were going to take

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1       the depositions and see later. If it's been decided and it's  
2 explicit, then I stand corrected.

3           THE COURT: I don't know either. So if you'll locate  
4 the transcript and send it to Ms. Calhoun, I'll take a look at  
5 it.

6           MR. CAMPBELL: Will do, Your Honor. Thank you.

7           MR. STERN: Well, Your Honor, if this is now going to  
8 be an issue where perhaps these witnesses aren't going to  
9 testify before Ms. White --

10          THE COURT: I think they're going to testify. So I'm  
11 --

12          MR. STERN: Okay. Thank you.

13          THE COURT: I think we've addressed it. The only  
14 question is whether if it wasn't addressed fully then I'll  
15 make a record and it will be addressed fully.

16          MR. STERN: Thank you, Judge.

17          THE COURT: Okay. Mr. Christian.

18          MR. CHRISTIAN: It's been addressed Your Honor.  
19 Thank you.

20          THE COURT: Oh, okay. All right.

21          MR. STERN: Judge, I need to ask one question.

22          THE COURT: Sure.

23          MR. STERN: Tomorrow morning at 8:30 in the morning,  
24 do you -- I think that the way your order was presented is  
25 that we're going to have a discussion about the applicability

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1 of Your Honor's ruling, correct?

2 THE COURT: Yeah.

3 MR. STERN: So how do -- if you don't mind, tomorrow  
4 is the expectation just that we're going to meet in the  
5 courtroom and everyone's going to talk? How will it work  
6 tomorrow?

7 THE COURT: It will work something like that.

8 MR. STERN: Okay.

9 THE COURT: We'll be meeting here in the courtroom.

10 MR. STERN: Okay.

11 THE COURT: I mean, we're going to have a lot of  
12 lawyers.

13 And I think, you know, you're providing those  
14 designations -- Mr. Mason, just a minute -- to the criminal  
15 defense lawyers. They've got them now. They'll be advising  
16 me whether their clients think they have a Fifth Amendment  
17 issue in the additional areas that are not within the scope of  
18 the deposition or not a detail about an area covered in the  
19 deposition. And then I'll make some decisions.

20 MR. STERN: Okay.

21 THE COURT: Based on that.

22 MR. CAMPBELL: Thank you, Your Honor.

23 MR. STERN: I had mentioned --

24 THE COURT: That's what I'm thinking.

25 MR. STERN: I had mentioned to Ms. Calhoun, and I'll

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1       just tell the defendants, that I have -- one of my kids has a  
2       baseball game tomorrow.

3                   THE COURT: That's great.

4                   MR. STERN: I don't know how much I'm going to be  
5       participating tomorrow. But I'll be here. And if it gets to  
6       a point where I feel like I need to make my flight, I might  
7       leave a little early. But Mr. Maimon will be here and I think  
8       that it will be past the time that we're going anyway, but I  
9       didn't want to be rude tomorrow.

10                  THE COURT: No. That's just fine.

11                  MR. CAMPBELL: I was going to alert you to a similar  
12       situation, only I'm leaving tonight. It's my wife's birthday  
13       and we have a family thing planned for tomorrow.

14                  MR. STERN: Then he's flying to come watch my kid's  
15       baseball game.

16                  THE COURT: Yeah. All of that is good. And there's  
17       an ample number of lawyers to cover, so. No shortage.

18                  MR. MASON: Your Honor, as promised, we provided a  
19       procedural outline for Your Honor to consider, which if Your  
20       Honor agrees we believe will take care of -- if the Court were  
21       to announce, for instance, and agree that it appears to us  
22       that 95 percent of this can be already resolved based on your  
23       ruling. And we could focus on just the issues that were not  
24       addressed in the deposition.

25                  There's three categories we outlined. And I would

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1       I hope that whatever modifications the judge -- Your Honor  
2       wishes to do would be fine. But I've tried to give you --  
3       we've tried to give you a roadmap based on what you've  
4       described to something we think could expedite this tomorrow  
5       so that we're just focusing on the issue of the Fifth  
6       Amendment and how it's used with respect to questions that  
7       have not been asked. So I just --

8               THE COURT: It's a helpful recommendation and it's  
9       what I was thinking of.

10          MR. MASON: Okay. Thank you, Your Honor.

11          MR. MAIMON: Obviously we'd like -- we've been in  
12       court. So we'd like to take a look at the requested roadmap.

13          THE COURT: I know.

14          MR. MAIMON: And while the plaintiffs would like to  
15       move it along, I think that the people under subpoena whose  
16       Fifth Amendment rights are being discussed, they might have  
17       some input into the suggested roadmap also.

18          THE COURT: Did you provide your suggested roadmap to  
19       them as well?

20          MR. MASON: I did not. We gave them the -- we gave  
21       them what you asked us to give to each of the individual  
22       lawyers. But I did not because I didn't know what the Court  
23       would want to do.

24          THE COURT: I think you should provide it to them.

25          MR. MASON: Okay. We'll send it this afternoon.

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1                   THE COURT: It's basically what the opinion said,  
2 which is that they've waived their Fifth Amendment with  
3 respect to the topics covered in the deposition. They can  
4 argue with respect to areas that were not covered in the  
5 deposition to determine whether those are details about areas  
6 that were covered.

7                   Or if they're new areas, whether they think it would  
8 subject them to self-incrimination. And then things that were  
9 not covered in the deposition that you think would not be  
10 subject to a Fifth Amendment objection. That's sort of 2 and  
11 3 can all be put together.

12                  MR. MASON: But 3 was intended to avoid a lot of  
13 comments about a circus and we're not interested in a circus.  
14 But we are interested in properly handling the Fifth. And so  
15 point number 3 addresses that with the preview for the Court  
16 to rule on. And so there would be very limited, we  
17 anticipate, need for those determinations. So --

18                  THE COURT: The only thing I'll say is what I heard  
19 from Governor Snyder's lawyers is that his official duties and  
20 responsibilities, just discussing them could expose him. So  
21 and that's in your topic number 3. So it may not be as easy  
22 as --

23                  MR. MASON: Well, some of the duties have been  
24 addressed already.

25                  THE COURT: Right.

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1                   MR. MASON: So they can take that to the -- that's  
2 their recourse. Go to the emergency request for the Sixth  
3 Circuit.

4                   THE COURT: Yeah.

5                   MR. MASON: So I think they have the ability to tee  
6 that up if they want rather than take all morning tomorrow  
7 suggesting that we revisit the issue. That's all.

8                   THE COURT: Okay.

9                   MR. MASON: So I'll provide it to them as soon as I  
10 get back, Your Honor.

11                  THE COURT: Okay. Thank you.

12                  MR. CAMPBELL: Your Honor, just one last thing --

13                  MR. MAIMON: We'll take a look at it also.

14                  MR. MASON: Sure. I already gave it to you.

15                  MR. MAIMON: I understand you've gave it to us in an  
16 email. We've been in court watching testimony. We'd like an  
17 opportunity to be heard.

18                  MR. ERICKSON: Of course.

19                  THE COURT: Absolutely. We'll be here at 8:30.  
20 Everyone can be heard. Counsel in our case can be heard  
21 before the witnesses' counsel would be heard.

22                  MR. CAMPBELL: Just one last thing, Your Honor, I'd  
23 like to mark for identification purposes only as ID for  
24 identification purposes Exhibit 6012, which are the pages of  
25 Mr. Gadis's deposition regarding his testimony about family

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1 members.

2 THE COURT: Okay.

3 MR. CAMPBELL: I gave that to Your Honor and to  
4 counsel.

5 THE COURT: Thank you.

6 MR. CAMPBELL: Thanks.

7 THE COURT: Okay. I have it and I'll provide it to  
8 Jeseca so it's somewhere safe.

9 MR. CAMPBELL: Thank you, Your Honor.

10 THE COURT: Okay. Thank you, all, very much.

11 (Proceedings Concluded)

12 - - -

13

14 CERTIFICATE OF OFFICIAL COURT REPORTER

15 I, Jeseca C. Eddington, Federal Official Court  
16 Reporter, do hereby certify the foregoing 40 pages are a true  
17 and correct transcript of the above entitled proceedings.

18 /s/ JESECA C. EDDINGTON  
19 Jeseca C. Eddington, RDR, RMR, CRR, FCRR

03/24/2022  
Date

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